

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

February 24, 2015

Re: Request for an Opinion under the Money Transmission Act

Dear _____:

This responds to your letters, dated, respectively, November 25, 2014 and January 13, 2015, in which you seek an opinion under the Money Transmission Act (commencing with Financial Code section 2000)(MTA) on behalf of _____. _____ or an affiliate proposes to engage in business as a licensee under the California Finance Lenders Law (commencing with Financial Code section 22000)(CFL).

It is the Department's understanding based on your letters, including the screenshot provided through your January 13, 2015 letter, and our telephone conversation on January 21, 2015 that _____ proposes to conduct its CFL business on mobile phones through its mobile phone application. The mobile phone application will include an application program interface (API) provided by _____, now known as _____, a current licensee under the MTA. _____ borrowers will be required to provide their name and bank account or debit card information through the API. The information will allow _____ to use _____ to transmit to _____ borrowers the proceeds of loans made by _____ to the borrowers. _____ will be _____ money transmission customer in all of the transactions involving the use of the API in _____ mobile phone application. _____ will pay _____ money transmission fees and will not share in any money transmission fees received by _____. _____ mobile phone application, any website it may establish and any other communications it may distribute to the public or its borrowers will not advertise or hold out _____ as a provider of money transmission, or solicit money transmission business for _____.

_____ borrowers will be allowed to make payments on their loans by scanning or photographing their checks, electronically transmitting the images of the checks to _____ and authorizing _____ to use the information from the checks to make one-time electronic fund transfers from the respective borrowers' bank accounts to _____ bank account in the amount of the checks. It is the Department's understanding that the loan payments are for amounts owed exclusively to _____ and do not include fees or other amounts that are owed to persons and entities other than _____. You are not able at this time to provide a form of the authorization that must be provided by _____

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borrowers in order for them to make payments by electronically transmitting images of their checks.

_____ borrowers can also make payments on their loans by authorizing _____ to make electronic transfers through _____ debits from the respective borrowers' bank accounts. _____ will use a borrower's authorization to have the borrower's bank transfer amounts from the borrower's account to _____ bank account. No third-party _____ processors will be used by _____ to affect the transfers of borrowers' funds to _____. The borrowers may cancel their authorizations in accordance with the Electronic Funds Transfer Act. It is the Department's understanding that the loan payments are for amounts owed exclusively to _____ and do not include fees or other amounts that are owed to persons and entities other than _____. You are not able at this time to provide a form of the authorization that must be provided by _____ borrowers in order for them to make payments by _____ transfer.

You have asked whether _____ must be licensed under the MTA in order to: (i) include the API in its mobile phone application; (ii) allow its borrowers to make loan payments by electronically transmitting an image of their payment check to _____ as described in your letters; and (iii) allow its borrowers to make loan payments by authorizing _____ to debit the respective borrowers' bank accounts by _____ fund transfers as described in your letters.

Financial Code section 2030(a) provides that:

A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division or is an agent of a person licensed or exempt from licensure under this division.

Financial Code section 2003(q) defines "money transmission" to mean any of the following:

- (1) Selling or issuing payment instruments.
- (2) Selling or issuing stored value.
- (3) Receiving money for transmission.

Based on the representations in your letters and the Department's understanding as described herein, it is the Department's opinion that _____ is not required to be licensed under the MTA in order for _____ to: (i) include the API in its mobile phone application for the purposes and under the conditions described in your letters, including, without limitation, the conditions that _____ is the money transmission customer of _____ for each transaction involving the API, and _____ mobile phone application, any website it may establish and any other communications to the public or to its borrowers do not advertise or hold out _____ as a provider of money transmission, or solicit money

transmission business for _____; (ii) allow its borrowers to pay amounts owed exclusively to _____ by scanning or photographing checks made out to _____ in the amounts owed to _____, electronically transmitting the images of the checks to _____, authorizing _____ to send the information from the checks to the respective borrowers' banks, and _____ sending the information to the borrowers' banks, which then execute one-time electronic fund transfers from the borrowers' bank accounts to _____ bank account for the amounts of the checks; and (iii) allow its borrowers to pay amounts owed exclusively to _____ by providing _____ with authorizations for _____ transfers of funds from the respective borrowers' bank accounts in payment of amounts owed exclusively to _____ by the borrowers, and _____ providing the authorizations directly, not through a third-party _____ payment processor, to the borrowers' banks, which then execute fund transfers from the borrowers' bank accounts to _____ bank account.

This opinion is based on the representations made to the Department in your letters and in the screenshot provided through your January 13, 2015 letter, and the Department's understanding set forth in this letter. Any different or additional facts or conditions, including any terms or conditions in the authorizations that _____ borrowers must provide in order to make payments by check or by _____ transfer, might require the Department to reach a different conclusion.

This opinion is not an opinion that: (i) _____ activities described herein are in compliance with the MTA; (ii) the proposed activities of either _____ or _____ are in compliance with the CFL, the Bank Secrecy Act or the applicable regulations of the Financial Crimes Enforcement Network; or (iii) that _____ or any affiliate will be licensed under the CFL.

Please contact the undersigned at 213.897.2172 if you have any questions.

Sincerely,

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Commissioner of Business Oversight

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